

In the matter of
Fact-Finding between:

THE CITY OF MAQUOKETA, IOWA

And

REPORT OF FACT-FINDER

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 234

HEARING AND APPEARANCES

On Thursday, April 10, 2008, between the hours of 10:00 a.m. and 12:30 p.m., I conducted a fact-finding hearing with the representatives of the City of Maquoketa, Iowa (City) and the International Union Of Operating Engineers, Local 234 (Union) under the provisions of the Iowa Public Employment Relations Act. Appearances for the respective parties were as follows:

<u>For the City:</u>	William J. Sueppel, Attorney Brian Wagner, City Manager Judy Carr, Deputy City Clerk
<u>For the Union:</u>	MacDonald Smith, Attorney Kevin Holzhauser, IUOE – Stationary Director

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Neither party requested a written transcript and neither party requested the issuance of subpoenas to compel testimony. The parties indicated that there were no disputes as to the negotiability of the issues at impasse. It was stipulated that the Union would proceed first with its entire case followed by the City with opportunity for both parties to respond thereafter. The parties agreed that there was no dispute with respect to the jurisdiction of the Fact-Finder or with respect to the submission of items prior to the hearing.

The parties agreed that there were no special procedures in effect with regard to handling impasse disputes beyond those provided by statute. The parties had previously agreed to waive the March 15 deadline for fact-finding and confirmed this to the Fact-Finder at the hearing.

The parties stipulated to a one year agreement and agreed that all provisions of the current contract would continue except the items at impasse and those changes "tentatively agreed" to as set forth in Union Exhibit 2 attached.

In the course of the hearing, both parties submitted their evidence and were given full opportunity to present argument and rebuttal. The recommendations set forth

below are based upon the Fact-Finder's weighing of all the facts and arguments submitted, even those which are not specifically referred to herein.

STATEMENT OF IMPASSE ITEMS

The Fact-Finder was presented with the issues listed below which were at impasse. The positions of the parties with respect to these impasse items are set forth under each issue.

ITEM I – ARTICLE 11, SECTION B. CALL BACK/STANDBY

The Union's final offer on this item proposes to maintain the current contract language on call back pay. The Union's proposal on standby pay is to increase the standby pay from the current practice of one hour of standby pay per 24 hour day of standby to 1-1/2 hours of standby pay for each 8 hours on standby or 24 hours of straight time per week of standby, whichever is less.

The City's final offer on this item proposes amendments to the current contract language which would remove call back pay when an employee is ordered to work beyond the employee's regular shift or called into work within two hours of the employee's start time and clarify the contract language regarding standby pay with the goal that it more clearly states the current practice of the parties.

ITEM II – ARTICLE 16, SECTIONS 3 and 4. HEALTH INSURANCE

The Union's final offer proposes increasing the City's contribution to health insurance premiums from \$540 per month to \$587 per month for family coverage and from \$440 per month to \$479 per month for single coverage.

The City's final offer proposes to increase the Employer's contribution from \$540 per month to \$550 per month for family coverage and from \$440 per month to \$450 per month for single coverage.

The Union also proposes the addition of language to Section 4, which would prohibit changes in the health insurance plan during the contract term without the consent of the Union.

ITEM III – ARTICLE 18 AND APPENDIX A. WAGES

The Union's final offer proposes a 4% across the board wage increase effective July 1, 2008.

The City's final offer proposes a 3.5% across the board wage increase effective July 1, 2008.

FINDINGS OF FACT AND RECOMMENDATIONS

Iowa Code §20.22 in paragraph 9 sets forth the factors to be considered by arbitrators in making their final determination when the parties are at impasse. Those statutory factors are as follows:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the affect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.
- e. Any other relevant factors.

Statutory fact-finders under Iowa Code §20.21 have generally used these same factors in formulating recommendations.

Subject to the statutory provisions governing the impasse process and after consideration of the exhibits, the submissions and presentations of the parties, the Fact-Finder recommends as follows:

ITEM I – ARTICLE 11, SECTION B. CALL BACK/STANDBY

DISCUSSION:

In support of its proposal regarding standby pay, the City argues that the current contract language is ambiguous and that in order to prevent future disputes the language should be changed to reflect the current practice. The Union does not contest the correctness of the current practice.

The Union's proposal advocates elimination of the second sentence of Subsection B.2 as a remedy for any possible ambiguity and further proposes to increase the compensation to 1-1/2 hours of standby pay for each eight hour shift the employee is on standby, subject to a weekly maximum standby pay of 24 hours straight time standby pay for up to seven days standby assignment.

The Fact-Finder finds that in the current contract language there is some dissonance between the first and second sentence of Subsection B.2. Since there is no dispute about the current practice being reflective of the intent of the parties, the Fact-Finder finds that the need for clarity provides sufficient support for a contract language change to remove the ambiguity or dissonance. The language proposed by the City accomplishes this result.

The Union asserts that its proposal on this issue would have the effect of modifying the current practice with the result that the employee required to be on standby would receive 1-1/2 hours of straight time pay for each eight hours that the employee is required to be on standby or would receive 24 hours of straight pay or compensatory time for each seven day period of standby assignment instead of the one hour of straight pay for each 24 hour day on standby under the current practice.

In support of their respective proposals, both parties provided the Fact-Finder with comparability data, but none of the comparability data proved to be significantly comparable and no clear trend was indicated.

The Union provided cost data showing a cost increase for its proposal of roughly four times, from \$4,934 to \$17,889.

On call back pay, the Union proposes maintaining the current contract language specifying a minimum of two hours of overtime pay for employees called back to work after leaving the City's premises and which does not provide for any call back pay when an employee is ordered to work beyond the regular shift. In support of maintaining the current contract language, the Union has submitted comparability data showing that practices similar to the current contract language exist in most of the cities in the comparability group and for utility workers and police in the City of Maquoketa. The Union further argues that no problems have arisen under the current language which would require the change and that the City has offered no justification for its proposal.

The City in its final offer on call back pay proposes additional language which would eliminate call back pay when an employee is called into work within two hours of the employee's regular start time. Beyond a generalized concern regarding overtime cost, the City has not offered any comparability or need justification for its proposed change.

The other statutory criteria were not addressed by the parties.

RECOMMENDATION:

Because the current contract language on standby pay is not clear and because the City's proposed language correctly states the parties acknowledged historical practice the change proposed by the City is warranted. The Union proposal fails to resolve the ambiguity and offers no justification for a substantial cost increase.

On call back pay, the current contract language has served the parties well and is in line with comparable communities. The City has provided no justification for a change.

The Fact-Finder recommends no change in the current contract language regarding call back pay and recommends adoption of the City's final offer proposal regarding standby pay such that the following language shall replace the first two sentences of Article II, Section B.2:

An employee required to be on standby will receive one hour of straight time pay or one hour of compensatory time for up to 24 hours, or portion thereof, the employee is required to be on standby.

ITEM II – ARTICLE 16, SECTIONS 3 and 4. HEALTH INSURANCE

DISCUSSION:

The Union's proposed language change to Section 4 seeks to prohibit changes in the insurance plan during the term of the contract without mutual agreement. Aside from the clear rationale that the Union would like to participate in any decisions to change the insurance plan, the Union offers no compelling reason for the language change. No comparability data is offered on this particular language change and no bargaining history is offered to justify the language change.

The main issue at impasse in the health insurance article is the amount at which the City's contribution to health insurance premiums is capped. Because both the current cap and the caps proposed by the City and the Union exceed the anticipated single premium cost, the only effective difference between the two offers is the additional cost of the proposals as they relate to the employees' contribution if family coverage is elected by the employee. At the current time, only one employee elects family coverage. As a result, the Union argues that the cost of its proposal is minimal, namely \$37 per month even if premiums rise 10%. The Union argues that its proposal more evenly allocates the cost increase between the City and the employee.

The City points out that with a 5% increase in premium cost the employee's percentage contribution under the Union's proposal would actually decrease from 19% currently to 18%. Even with a 10% premium increase, the employee's contribution under the Union's proposal would only go to 20%. Under the City's proposal the employee's percentage contribution at a 5% premium increase would be 20% and at a 10% premium increase would be 22%.

The City's data also shows that the range of the employee's percentage contribution has been between 19% and 24% with the three most recent year's percentages being at the lower end of the range. The average employee percentage over the past six years is 21%.

Both parties offered comparability data regarding the City's contribution to health insurance premiums.

A review of the evidence in light of the statutory factors set forth in Iowa Code Section §20.22 produces the following:

- a. Past collective bargaining contracts and bargaining history. It is undisputed that the bargaining and contract history between the parties shows that the City has traditionally paid a significant percentage of the family health insurance coverage cost. It appears that the employee's percentage has been 24% or less in recent years and has been declining. Currently it is approximately 19%. Employees electing single coverage currently and historically pay no portion of the cost and likely will not pay any portion of the cost under either party's proposal.

The City proposes a \$10 increase in the single health insurance premium cap, while the Union proposes a \$39 increase in the cap. Judging by recent history, the cap has increased \$15 per year for the past two years (City Exhibit 7).

- b. Comparability. The comparability data offered by the City consists of seven small cities with similar populations. The Union's comparability group likewise consists of six small cities with population ranging from 4,000 to 6,500 in population generally within 100 miles of Maquoketa and all with similar bargaining units represented by the Teamsters, IUOE or IBEW. The Union also points to Clinton and Dubuque as part of its comparison because of the competitive draw of those two larger cities. The review of the comparability data shows that in both comparability groups and in Dubuque and Clinton, the employees who elect family coverage pay a smaller absolute amount and a smaller percentage of the total premium than employees in Maquoketa.

In support of its position, the City argues that the police in Maquoketa have already agreed to a \$15 increase in the City's cap.

- c. Ability to pay. The City acknowledged that it was not making any argument that it had an inability to pay the full cost of the Union's proposal. Likewise, there was no evidence provided concerning the interest and welfare of the public or the effect of continuing such payments on the standard of services.
- d. Power to tax. There was no question raised regarding the power of the public employer to levy taxes or appropriate funds.
- e. Other factors. No other factors were raised by the parties which would impact this issue.

In the end, the Union has failed to demonstrate a compelling need for its proposed change to the language in Section 4. On the amount of the City cap to insurance premium contributions, whether the total premium increase was 5% or 10% or somewhere in between, the City's proposal of \$550 per month would result in an increase in the employee's contribution which would be contrary to the historical trend in the percentage of contributions as shown on City Exhibit No. 7. The Union's offer of \$587 for the cap more closely approaches the 19% contribution that has predominated in recent years, but would have the effect of reducing the employee percentage if the premium increase were 5%. A City contribution cap of \$580 would result in a 19% employee contribution to the family premium.

RECOMMENDATION:

The Fact-Finder recommends no change in the current contract language in Section 4 and recommends that the City's contribution to an employee's family hospital and medical care insurance set forth in Section 3 be increase to \$580 per month. The Fact-Finder also recommends an increase in the City's contribution cap for single insurance premiums from \$440 per month to \$455 per month.

ITEM III – ARTICLE 18 AND APPENDIX A, WAGES

DISCUSSION:

The Union proposes a 4% across the board wage increase. The City proposes a 3.5% wage increase. Analyzing the proposals and the evidence in light of the Iowa statutory criteria produces the following:

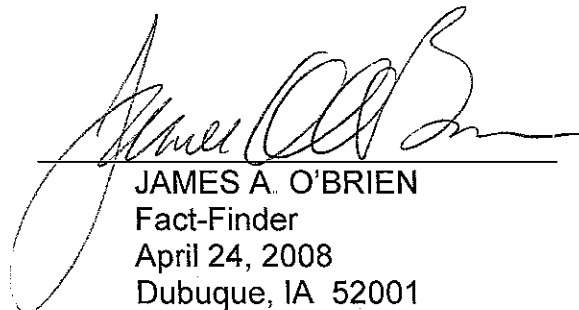
- a. Past collective bargaining contracts and bargaining history. The bargaining history between the parties for this bargaining unit shows that for the years 2002 through 2007 the parties bargained for a 3% or 4% annual across the board wage increase for these years with an average increase of 3.33% per year (City Exhibit 4).
- b. Comparability. The Union's comparability data shows that in absolute terms, the wages of the members of the bargaining unit exceed those of similar employees in the comparability group (to the extent they can be compared). For the seven cities in the City's comparability group, the wage increase effective July 1, 2008 were mostly 4% or higher for an average of 3.79% (City Exhibit 5). In Maquoketa the police have agreed to a 3.75% increase and nonunion employees will receive a 3.5% increase. Also, in support of its offer, the City points to a CPI increase of 3.8% (City Exhibit 13).

- c. Ability to pay. The City acknowledges that it is not making any argument that it has an inability to pay the cost of the increase proposed by the Union. Likewise, there was no evidence provided concerning the interest and welfare of the public or the effect of the Union wage proposal on the standard of services. The City did indicate that the public works budget was over-budget due to the winter expenses, but did not argue that that would affect the standard of services in the future.
- d. Ability to tax. There was no question raised regarding the power of the City to levy taxes or appropriate funds.
- e. Other factors. None.

RECOMMENDATION:

While it may appear to simply be splitting the difference between the two wage offers, the Fact-Finder recommends a 3.75% across the board salary increase commencing July 1, 2008. A 3.75% across the board increase approximates the average wage increase in comparable cities, is comparable to the wage increase agreed to by the police bargaining unit in Maquoketa and also approximates the CPI increase shown in Employer Exhibit 13.

The recommendations set forth above are based upon the standards provided under the Iowa Code. It is sincerely hoped that this report, with its recommendations, can be a basis for agreement between the parties without further proceedings.



JAMES A. O'BRIEN
Fact-Finder
April 24, 2008
Dubuque, IA 52001

CERTIFICATE OF SERVICE

I certify that on the 24th day of April, 2008, I served the foregoing Report of Fact Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

William J. Sueppel
Meardon, Sueppel & Downer, P.L. C.
122 South Linn Street
Iowa City, IA 52240-1802

MacDonald Smith
530 Frances Building
503 Fifth Street
P.O. Box 1194
Sioux City, IA 51102

I further certify that on the 24th day of April, 2008, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, IA 50319

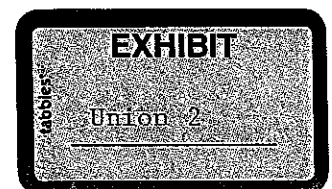

James A. O'Brien, Fact-Finder

Tentative Agreements

In addition to the agreement to change the name of the bargaining representative and references to the "Association" to "Union," it is the understanding of the Union that the attached changes to provisions of the current collective bargaining agreement have been tentatively agreed to by the parties.

Group A are changes in existing contract language or addition new language. The language changes are underlined.

Group B are deletions from existing language. The deletions are crossed-out in the existing language.



Group A

ARTICLE 6 DUES CHECK-OFF

Section 1. The Employer will make monthly deductions for dues, fees and assessments from the first paycheck of the month from the wages of each Employee covered by this Agreement if the Employee provides the Employer with a written authorization therefor. The amount to be deducted shall be certified to the Employer in writing by the Union. The Employer will remit such money to the Treasurer of the Union not later than fifteen (15) days after the money has been withheld.

Along with the remittance, the Employer will provide the names of each Employee being remitted for and names of Employees hired, laid off, suspended or terminated during the month.

ARTICLE 10 HOURS OF WORK

Section 2. A. Each Employee shall receive two (2) fifteen (15) minute paid breaks during each work day, which period shall be measured from the time the Employee leaves until the time the Employee returns to the work site. Each Employee shall receive an unpaid lunch period of thirty (30) minutes near the middle of the shift.

ARTICLE 11 OVERTIME

A. Overtime:

Section 1. (b) An Employee is entitled to overtime if said Employee works in excess of eight (8) hours on a shift, or in excess of the normal work schedule. A week for purposes of this computation shall commence at Midnight on Saturday and shall continue until Midnight the following Saturday. All hours in pay status, except compensatory time, shall count towards computation of overtime.

Section 2. Overtime shall be compensated at the rate of one and one-half (1-1/2) times the Employee's regular straight-time hourly rate of pay. It shall be computed to the nearest one-tenth (1/10) of an hour for payment.

ARTICLE 12 **HOLIDAYS**

Section 4. For purposes of this Article, a holiday shall be presumed to commence at 12:00 A.M. of the day on which the holiday is to be observed and shall continue until 11:59 P.M. on the following day.

Section 8. All work performed on holidays shall be paid at one and one-half (1-1/2) times the Employees rate of pay.

ARTICLE 14 **LEAVES OF ABSENCE**

B. Funeral Leave

Section 1. An Employee, including a probationary Employee, will be excused from work with pay for up to five (5) days in order to arrange for and attend the funeral of the Employee's spouse, parents, stepparents, children and stepchildren. The Employee, including a probationary Employee, will be granted three (3) days of funeral leave with pay to attend the funeral of the Employee's brother, sister, grandparents, grandchildren, parents-in-law, brother-in-law and sister-in-law. Such leave shall only be granted for scheduled work days. Employee must attend funeral to be eligible for such leave. Other accumulated paid leaves may be requested by Employee, if additional leave is needed.

Group B

ARTICLE 8.

PROCEDURE FOR STAFF REDUCTION

Section 1. In the event the Employer determines that an employee must be laid off, the Employer shall consider qualifications, ability to perform, ~~physical fitness~~ and seniority, and if qualifications, ability to perform, and ~~physical fitness~~ are equal between or among affected employees, seniority shall govern. Lay off part-time first, lay off temporary employees second, probationary employees third and then regular full time.

ARTICLE 14

LEAVES OF ABSENCE

Section H, 5 deleted in its entirety.

ARTICLE 15

GRIEVANCE PROCEDURE

Section 3.

Step Three If the grievance is not settled in Step Two, the aggrieved employee or the Association may appeal to arbitration. The employee shall request arbitration by written notice submitted to the City Manager within five (5) calendar days (excluding Saturday, Sunday, and holidays) from the date that the City Manager's decision was given; or, if no decision was given within five (5) calendar days (excluding Saturday, Sunday, and holidays) of when it was due, whichever occurs first. The written notice shall contain the same information as required in the previous Step. When a timely request has been made for arbitration, a representative of the Employer and the employee or the Association shall select a mutually agreeable arbitrator to hear and determine the grievance. If the representatives of the parties are unable to agree upon the selection of an arbitrator within five (5) calendar days of the Employer's receipt of the arbitration notice, the parties shall jointly request the public Employment Relations Board ~~or the Center for Labor and Management at the University of Iowa~~, to submit a list of five (5) grievance arbitrators. Upon receipt of the list, the parties designated representatives shall determine by lot the order of elimination and thereafter each shall, in that order, alternately strike a name from the list and the fifth and remaining person shall act as the arbitrator.

ARTICLE 17

HEALTH AND SAFETY

Section 3. Any personal item required by the Employer to be worn or used in the performance of an employee's job covered by this Agreement, which is damaged or destroyed in the performance of required duties, shall be repaired or replaced at its replacement cost ~~up to a maximum of Fifty Dollars (\$50.00) per contract year~~. A report must be forwarded to the employee's Supervisor before the end of the working day, stating the item was damaged and the circumstances causing the damage.

ARTICLE 19.

SUPPLEMENTAL PAY

A. Commercial Driver's License

Section 1. The Employer shall reimburse the employee for the cost of a commercial driver's license, ~~if the Employer requires the employee to have a commercial driver's license~~. This benefit does not apply to any expense involved in obtaining a license, nor does it apply to the cost of a new license issued as a result of a suspension or revocation.